



POLICE DEPARTMENT

April 15, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Christopher Popovic
Tax Registry No. 920717
Police Service Area 5
Disciplinary Case No. 2013-10686

The above-named member of the Department appeared before me on December 12, 2014, charged with the following:

1. Said Lieutenant Christopher Popovic, on or about August 11, 2012, at approximately 1736 hours, while assigned to the PSA 5 and on duty in the vicinity of [REDACTED] New York County, abused his authority as a member of the New York City Police Department, in that he stopped Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

2. Said Lieutenant Christopher Popovic, on or about August 11, 2012, at approximately 1736 hours, while assigned to the PSA 5 and on duty in the vicinity of [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he frisked Person A's backpack without sufficient legal authority.

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT- PROHIBITED
CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Carrie Eicholtz, Esq. Respondent was represented by Michael Lacondi, Esq.

Respondent through his counsel entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 1 and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on August 11, 2012, at about 17:36 hours, Respondent, while assigned to the PSA 5, was on duty, dressed in uniform, and performing patrol duties in an unmarked department car. Shawn Nandkisure was his partner and was driving.

In the vicinity of [REDACTED] in New York County, Respondent stopped Person A while he was walking with a group of friends. Nandkisure patted down Person A's person and patted down Person A's backpack. Respondent also frisked [REDACTED]'s backpack. A combination bottle opener that had a knife blade and corkscrew on it was found during Nandkisure's search. Person A was arrested for criminal possession of a weapon and taken to the station. The case was ultimately dismissed.

Nandkisure took a *nolo contendere* plea and for his penalty received reinstruction on stop and frisk.

The CCRB's CaseHearsay Statement of Person A

Person A did not appear to testify. CCRB believed that Person A was no longer cooperative. CCRB could not successfully serve Person A and presented an affidavit of attempted service. Person A also failed to appear at the August 12th trial date, for which a car service had been arranged to bring him to court. Person A's two brothers were successfully served and also failed to appear. CCRB has not had any contact with him since the August 12th trial date. In lieu of Person A's presence, CCRB entered into evidence its interview of Person A on August 28, 2012. (CCRBX 1A, 1B). CCRB also entered into evidence affidavits of investigation. (CCRBX 2A, 2B, 2C)

In Person A's interview he stated that he was walking to a deli with a group of five friends. As they were crossing in front of a car, Person A stopped to laugh at a parked unmarked police car because it was dirty. While Person A and his group of friends crossed the street, the officers turned on the sirens of the car, drove down the street and cut in front of Person A and his friends. The officers ordered Person A to "come here." Person A was ordered to place his hands on the car. The officers asked him where he lived. While Person A answered questions, Nandkisure patted down his outer arms, inside of his arms, and all the way down his legs. Nandkisure also searched him by putting his hands into Person A's short pockets, and checked his book bag. Nandkisure found a bottle opener, with a knife on the side in [REDACTED]'s right pocket, and an "iPod touch" in his left pocket. Inside the book bag he found clothes and sneakers. Respondent and his partner asked Person A questions about an individual named [REDACTED] and shootings that had taken place in the Taft Projects. Person A stated he

did not know [REDACTED] or about any shootings. Person A was arrested for criminal possession of a weapon and taken to the station.

Respondent's Case

Respondent called Police Officer Shawn Nandkisure and testified on his own behalf.

Shawn Nandkisure

Nandkisure testified that he and Respondent were on patrol in uniform in an unmarked police car in a high-crime area known as "The Strip." Nandkisure could not recall his exact assignment on the day of the incident but believed it was called Family Day. Family Day consists of barbecues and other parties throughout the housing development. Family Day tends to be violent due to gang activity. Neighboring gangs will come to an area during Family Day to catch the other gang off guard. The officers were looking for outsiders who might be from different gangs.

While on patrol, a group of teens walked by the officers' unmarked police car. Nandkisure saw Person A staring at them. Person A then stopped and looked back at the car after every few steps. Nandkisure and Respondent became suspicious of Person A because he appeared nervous and because he was carrying a book bag that looked bottom heavy. Nandkisure believed that Person A was nervous because of what was in his backpack. Nandkisure explained that two weeks before this encounter he had stopped an individual with a bottom heavy book bag, and there had been a gun inside it. Nandkisure believed that this was a similar scenario and that a firearm might be in Person A's book bag. Person A also piqued Nandkisure's interest because he had never seen him in the area before.

Nandkisure and Respondent pulled their car to the side of the street where Person A was and stopped him to question him. Nandkisure asked Person A where he lived; Person A pointed to a building, but could not provide an address. Nandkisure then asked Person A which apartment he lived in and Person A stated he lived on the 18th floor. However Nandkisure knew that the building Person A pointed to, which [REDACTED] did not have 18 floors.

Nandkisure reached over and felt the bottom of the book bag as Person A was explaining where he lived and discovered that sneakers were weighing down the bag. Nandkisure then felt the smaller pocket and noticed a small square object. Person A claimed he did not know what was in the pocket. Nandkisure unzipped the pocket and found a combination bottle opener that had a knife blade and corkscrew on it. Person A stated that he used the bottle opener for maintenance for his job, but when questioned, could not provide information about where he worked.

Nandkisure and Respondent then made an arrest for the weapon. Nandkisure and Respondent conducted a field search of Person A before taking him to the precinct. Nandkisure could not recall if he told Respondent that it was sneakers in the bag or if Respondent frisked Person A.

Respondent

Respondent testified that he and Nandkisure were on patrol in uniform in an unmarked police car in PSA 5 at the Lehman Houses, Taft Houses, and Johnsons Houses. Respondent explained that in this area there were gangs of young black and Hispanic males ranging in age from 14 to early 20's. Respondent testified that he noticed a young

male walk by his car with a bottom heavy knapsack, and based on his experiences, this was indicative that a firearm might be causing the bag to sag. Respondent thought person A kept looking back at the officers to see if they were going to pull away, and that he might run. Respondent believed that Person A's looking back multiple times and the bottom heavy book bag were suspicious.

Respondent and Nandkisure effected a forcible stop. Respondent stated, "As I approached him, I'm locked on with my eyes on the bag but then I switch to the subject. So I'm controlling the subject. He was evasive and a little combative." Person A turned his shoulder away from Respondent when Respondent grabbed his arm. Respondent and Nandkisure reached for the bag at the same time. Respondent patted the bottom of the bag because he believed it contained a firearm and noticed the bottom of the bag felt heavy and hard. Respondent stated, "I kept controlling the subject while officer Nandkisure was checking the bag and he came out with a multitool corkscrew/knife object."

On cross-examination, Respondent was confronted with a statement he made at his CCRB interview that "we were focusing on every individual just to see if we could pick something up." Respondent explained that the purpose of patrol is to watch the people that are on the street. Respondent did not recall Person A laughing or pointing at their patrol car or any other teens that Person A was with because he was focused on the bag. Respondent recalled that he and his partner began questioning person A after they approached him. Respondent patted the bag once. The part of the bag he touched felt like a firearm. Respondent did not mention Person A's furtive movements in his CCRB interview.

Respondent explained that they did not take the bag off Person A because they were checking for the firearm first to alleviate any danger. Although he had not observed Person A using the bottle opener as a weapon, Respondent asserted that it could be classified as a weapon. Respondent was unaware that the bottle opener was returned to Person A.

FINDINGS AND ANALYSIS

The Stop

Respondent stands charged with stopping Person A without sufficient legal authority. The testimony from Respondent and his partner demonstrated that they conducted a stop. Respondent stated that he "controlled the subject" by "grabbing hold of his arm for a moment and telling him to relax."

Respondent and his partner were patrolling in a high crime area, during Family Day in a housing development which tends to be violent due to gang activity. They had been instructed to look in this particular area for gang youth groups who were black and male Hispanics, ranging in the age from 14 to their lower 20s. Respondent testified he saw Person A staring at him and his partner as Person A and a group of teens crossed in front of the vehicle. Person A also kept stopping every few steps to look back at the officers. Respondent stated he believed Person A "appeared nervous" and "the bottom of the knapsack was loaded down very heavily." Two weeks before, Respondent's partner had stopped someone with a bottom heavy backpack that had a gun in it. "Based on my experience," Respondent said, "I believed a firearm was causing this sag or droop in the bag." Respondent believed that Person A saw the officers observing him through their windshield and that he was getting ready to run away.

These factors may have been enough to have allowed Respondent the right to approach and question, but did not rise to the level of reasonable suspicion under *Patrol Guide 212-11*. The most compelling reason that Respondent and his partner had to stop Person A was that he was carrying a knapsack which was "loaded down very heavily." However, a bottom heavy knapsack could have been the result of any number of things that are legal. *Matter of Jaquan M.*, 97 A.D.3d 403 (1st Dep't 2012).

Accordingly, Respondent is found Guilty of stopping Miller without legal authority.

The Frisk

Respondent stands charged with frisking Person A's backpack without sufficient legal authority. Respondent testified that he patted the bottom of Person A's bag where he believed there was a gun.

If Respondent did not have the legal authority to stop Person A, he did not have the legal authority to frisk Person A's bag. Person A's dubious answers to the questions he was asked may have given rise to elevating Respondent's authority to stop Person A under *People v. Debour* 40 NY2d 210 (1976). Respondent recalled that he and his partner began questioning Person A after they approached him. The record is not clear at exactly what point after the stop they asked him questions and Person A answered. However, the testimonies of both officers and Person A's statement indicated that the questions and answers occurred at the same time as Nandkisure searched the bag and Respondent patted it.

An officer can frisk if he reasonably suspects he or others are in danger of physical injury. *P.G. 212-11*. Respondent failed to articulate that he feared for his safety or that a reasonable basis existed for safety concerns.

Based on the foregoing, Respondent did not have sufficient legal authority to frisk Person A's backpack. Accordingly, Respondent is found Guilty of frisking Miller without legal authority.

PENALTY

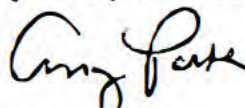
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 11, 1988. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate recommended a penalty of eight vacation days. This recommendation is excessive. The patting of the bottom of the backpack was minimally intrusive. Also, Respondent's partner who conducted a stop and a full search of the knapsack received reinstruction on Stop and Frisk procedure for his penalty. Therefore, it is recommended that Respondent receive a reprimand.

APPROVED

JUN 23 2015
WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner – Trials

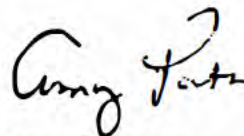
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT CHRISTOPHER POPOVIC
TAX REGISTRY NO. 920717
DISCIPLINARY CASE NO. 2013-10686

Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his last three annual performance evaluations. He has been awarded one medal for Excellent Police Duty and three for Meritorious Police Duty. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner – Trials